

# United States Senate

WASHINGTON, DC 20510

May 22, 2002

The Honorable Michael K. Powell  
Chairman  
Federal Communications Commission  
445 12th Street, S.W.  
Suite 8C453  
Washington, DC 20554

Dear Chairman Powell

We are writing to request that the Federal Communications Commission undertake a study of concentration in the television programming marketplace and its impact on program diversity. While we understand that a task force has been assembled at the FCC to examine -- generally -- media consolidation in the marketplace, it is our intent to ensure that this examination includes an objective analysis of competition and program diversity issues associated with media consolidation.

Over the years both Congress and the FCC have taken steps to ensure that there would be a variety of video program producers, in the belief that different, competing voices leads to greater consumer choice and stimulates the development of new and innovative programming. An example of FCC action occurred in the 1980s when the Commission created the low power television market in an effort to promote innovative programming for rural areas and distinct communities within larger cities. One example of Congressional action is found in the 1992 Cable Act, where we prohibited exclusive programming contracts in order to "promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video market."

The effort to promote diverse voices has been undermined over the last decade by extensive media concentrations and changes to FCC rules governing media outlets. These trends may unfortunately be accelerated by the recent decisions by the D.C. Circuit to strike down some media ownership rules and remand others to the FCC for greater justification.

The collection of data about the broadcast, cable, satellite, Internet and other distribution platforms, in conjunction with an assessment of the robustness and viability of the independent programming community, would help both the Congress and the Commission as determinations are made as to appropriate limits in light of the recent federal appellate court decisions. We ask that the investigation be completed by the end of this year, or before the Commission acts on any media ownership rules, whichever date is earlier.

Data that should be a part of such a report includes, but should not be limited to:

- An assessment of the extent to which the television program producing marketplace is controlled or influenced by the largest distributors of television programming, including how those figures have changed over the past ten years. In assessing control or influence, please take into account any equity stake, rights to revenue and/or warrants.
- An assessment of the extent to which distributors of television programming (e.g., broadcast networks, cable operators, DBS operators) also own or are owned by consolidated entities which have substantial economic interests in programming they distribute.
- An assessment of the extent to which the large distributors carry programming in which they do not have ownership or controlling interests or influence (as defined above), including an analysis as to whether such carriage has declined over the past ten years.
- An assessment of the extent to which distributors of programming allow intra-sector competition against programming in which they have a substantial economic interest e.g., competition against an affiliated news or sports channel.

In assessing the marketplace please determine and, if possible, quantify whether, and to what degree, vertically integrated distributors favor their own programming and/or discriminate against independent programming with regard to carriage, compensation, channel position, marketing support, and other factors that are critical to the success of new and/or competitive programmers. We are also interested in the extent to which the economics of independent programmers has changed in a way that undermines their viability as competitors.

We would also ask that any analysis as to consolidation's impact on program diversity examine whether, in light of that consolidation, there exists justification for eliminating the program access rules this October, or whether the converged marketplace dictates that those rules be retained or even expanded, to protect diversity of programming available to consumers

Diversity of voices and opinions are vital to competition as well as the discourse of our democracy. Given the substantial, ongoing consolidation in the media industry and recent court decisions striking down rules that restrain this trend, we are extremely concerned that this competition and discourse is at risk.

We feel this is an issue that urgently needs attention. Congress may certainly act before you have a chance to complete your study. However, your examination, if completed quickly,

could help determine whether Congress or the Commission needs to take action to ensure that program distributors do not prevent consumers from accessing unaffiliated programming and services.

Sincerely,

Jeff Hallen  
Mike DeWine

Hub

cc: The Honorable Commissioner Kathleen Abernathy  
cc: The Honorable Commissioner Michael Copps  
cc: The Honorable Commissioner Kevin Martin